

Recording requested by:

SHERIDAN RANDOLPH
3564 GRESHAM COURT
PLEASANTON, CA 94566

91 JAN 25 AM 8:00

RECORDED AT REQUEST OF

When recorded, mail certified copy to:

Department of Health Services
Toxic Substances Control Program
Region 1 (Northern California Section)
10151 Croydon Way, Suite 3
Sacramento, CA 95827

301

COVENANT AND AGREEMENT
TO RESTRICT USE OF PROPERTY

This Covenant and Agreement ("Covenant") is made on the
26th day of December, 1990, by
Sheridan Randolph ("Covenantor"), who is the owner of record
of certain real property situated in the City of Stockton,
County of San Joaquin, State of California, described in
Exhibit "A" attached hereto and incorporated herein by this
reference ("the Property") and by the California Department of
Health Services, with reference to the following facts:

A. This Property, as described in Exhibit "A" is the real
property known as Acme-Stockton Galvanizing Works,
located at 540 West Scotts Avenue, Stockton, County of
San Joaquin, California, which has been the site of a
hazardous substance release.

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TOXIC SUBSTANCES CONTROL DIVISION
CENTRAL FILE UNIT

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4 B. The Property is located in an industrial area of the City
5 of Stockton and was formerly used as a zinc galvanizing
6 operation. Accidental spillage from acidic vats and wash
7 tanks contaminated the soil at this property. The
8 contaminated soil underneath the southern one-half
9 portion of the building located on the property exceeded
10 hazardous levels of zinc, lead and pH. The contaminated
11 soil was excavated, chemically treated and stabilized,
12 and then redeposited into a large trench underneath the
13 southern one-half portion of the building located on the
14 property, and then covered and capped with an asphalt
15 floor.

16 C. Covenantor desires and intends that in order to protect
17 the present or future public health and safety and the
18 environment, the Property shall be used in such a manner
19 as to avoid potential harm to persons or property which
20 may result from stabilized soil which has been deposited
21 into the ground under the area delineated and defined by
22 the southern one-half portion of the building located on
23 the Property as described in Exhibit "A".

24 D. The Covenantor further desires and intends
25 that the terms of the Covenant are for the
26 mutual benefit of the Property and shall
27 constitute an easement held by the People of the

State of California in the Property which shall run with the land, shall inure to the benefit of the Property, and shall apply to and bind the respective successors in interest thereof.

ARTICLE I

GENERAL PROVISIONS

1.01 Provisions To Run With The Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions, (collectively referred to as "Restrictions"), upon and subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Property, and shall apply to and bind the respective successors in interest thereof. Each and all of the Restrictions are imposed upon the entire Property as mutual equitable servitudes in favor of the Property and every portion thereof, unless expressly stated as applicable to a specific portion of the Property. Each and all of the Restrictions are imposed pursuant to Sections 25355.5 and 25356.1 of the California Health and Safety Code and run with the land pursuant to Section 25355.5. Each and all or the

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5 Restrictions are enforceable by the Department of Health
6 Services, and its successor agencies, if any.

7 1.02 Concurrence Of Owners Presumed. All purchasers,
8 lessees, or possessors of any portion of the Property shall be
9 deemed by their purchase, leasing, or possession of such
10 Property, to be in accord with the foregoing and to agree for
11 and among themselves, their heirs, successors and assignees,
12 and the agents, employees, and lessees of such owners, heirs,
13 successors, and assignees, that the Restrictions as herein
14 established must be adhered to for the benefit of future
15 Owners and Occupants and that their interest in the Property
16 will be subject to the Restrictions contained herein.

17 1.03 Incorporation Into Deeds And Leases. Covenantor
18 desires and covenants that the Restrictions set out herein
19 shall be incorporated by reference in each and all deeds
20 and leases of any portion of the Property.
21

22 ARTICLE II
23

24 DEFINITIONS

25 2.01 Department. "Department" shall mean the California
26 State Department of Health Services and shall include its
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5
6 successor agencies, if any.

7 2.02 Improvements. "Improvements" shall mean all buildings,
8 structures, roads, driveways, regradings, and paved parking
9 areas, constructed or placed upon any portion of the Property.

10 2.03 Occupants. "Occupants" shall mean those persons
11 entitled by ownership, leasehold, or other legal relationship
12 to the exclusive right to occupy any portion of the Property.

13 2.04 Owner. "Owner" shall mean the Covenantor or its
14 successors in interest, including heirs, and assigns, who
15 hold title to all or any portion of the Property.

16 2.05 "Excavation" shall mean the excavation of stabilized
17 soil below the asphalt and/or cement cap that covers the
18 Property.

19
20 2.06 "Hazardous materials" shall have the meaning set forth
21 in California Code of Regulations, Title 22, Section 66084.

22
23 ARTICLE III

24 DEVELOPMENT, USE, AND CONVEYANCE OF THE PROPERTY

25 3.01 Restrictions On Use. Covenantor promises to restrict
26 the use of the Property as follows:
27

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- (A) The Property at 540 West Scotts Avenue shall not be used for residences, hospitals, schools for persons under age 21, day-care centers or any permanently occupied human habitation, including hotels or motels which are used as a permanent residence by employees, without the prior written approval of the Department.
- (B) No use of the Property shall be allowed to disturb the integrity of the final asphalt and/or cement cap over the stabilized soil that has been redeposited into the ground in the area defined and delineated by the southern one/half portion of the building located on the Property as described in Exhibit "A", unless the Covenantor, owner, occupant or lessee can adequately demonstrate to the Department that the disturbance of the final cap is necessary to the proposed use of the Property and will not increase any potential hazard to the public health and safety of the environment, or is necessary to reduce an imminent threat to the public health and safety or the environment.

3.02 Conveyance Of Property. The Covenantor, Owner or Owners shall provide a thirty (30) day advance notice to the Department of any sale, lease, or other conveyance of the

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5 Property or an interest in the Property to a third person.
6 The Department shall not, by reason of the Covenant, have
7 authority to approve, disapprove, or otherwise affect any
8 sale, lease, or other conveyance of the Property except as
9 otherwise provided by law, by administrative order, or by
10 reason of this Covenant.

11 3.03 Enforcement. Failure of the Covenantor, Owner or
12 Occupant to comply with any of the requirements, as set forth
13 in Section 3.01, shall be grounds for the Department, by
14 reason of the Covenant, to require that the Covenantor, Owner
15 or Occupant modify or remove any Improvements constructed in
16 violation of that section. Violation of the Covenant shall be
17 grounds for the Department to file civil and criminal actions
18 against the Covenantor, Owner or Occupant as provided by law.

19 3.04 Notice In Agreements. All Owners and Occupants
20 shall execute a written instrument which shall accompany all
21 purchase, lease, sublease, or rental agreements relating to
22 the Property. The instrument shall contain the following
23 statement:
24

25 "The land described herein contains hazardous substances.
26 Such condition renders the land and the owner, lessee,
27

or other possessor of the land subject to requirements, restrictions, provisions, and liabilities contained in Chapters 6.5 and 6.8 of Division 20 of the California Health and Safety Code. This statement is not a declaration that a hazard exists."

ARTICLE IV

VARIANCE AND TERMINATION

4.01 Variance. Any Owner or, with the Owner's consent, any Occupant of the Property or any portion thereof may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Section 25233 of the California Health and Safety Code.

4.02 Termination. Any Owner or, with the Owner's consent, an Occupant of the Property or any portion thereof may apply to the Department for a termination of the Restrictions as they apply to all or any portion of the Property. Such application shall be made in accordance with Section 25234 of the California Health and Safety Code.

4.03 Term. Unless terminated in accordance with Section 4.02 above, by law or otherwise, this Covenant shall continue

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5 in effect in perpetuity.

6 ARTICLE V

7 MISCELLANEOUS

8
9 5.01 No Dedication Intended. Nothing set forth herein shall
10 be construed to be a gift or dedication, or offer of a gift or
11 dedication, of the Property to the general public or for any
12 purposes whatsoever.

13 5.02 Notices. Whenever any person shall desire to give
14 or serve any notice, demand, or other communication with
15 respect to this Covenant, each such notice, demand, or other
16 communication shall be in writing and shall be deemed
17 effective [1] when delivered, if personally delivered to
18 the person being served or to an officer of a corporate
19 party being served or official of a government agency being
20 served, or [2] three (3) business days after deposit in the
21 mail if mailed by United States mail, postage paid certified,
22 return receipt requested:

23 To: Ms. Sheridan Randolph
24 Acme-Stockton Galvanizing Works
25 3564 Gresham Court
26 Pleasanton, CA 94566
27

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5 Copy to: Department of Health Services
6 Toxic Substances Control Program
7 Region 1, Site Mitigation Branch
8 10151 Croydon Way, Suite 3
9 Sacramento, California 95827

10 5.03 Partial Invalidity. If any portion of the Restrictions
11 set forth herein or terms are determined to be invalid for any
12 reason, the remaining portion shall remain in full force and
13 effect as if such portion had not been included herein.

14 5.04 Article Headings. Headings at the beginning of each
15 numbered article of this Covenant are solely for the
16 convenience of the parties and are not a part of the Covenant.
17

18 5.05 Recordation. This instrument shall be executed by the
19 Covenantor, and by the Director, California Department of
20 Health Services. This instrument shall be recorded by the
21 Covenantor in the County of San Joaquin within ten (10) days
22 of the date of execution.

23 5.06 References. All references to Code section include
24 successor provisions.
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IN WITNESS WHEREOF, the parties execute this Covenant as of
the date set forth below.

OWNER

ACME STOCKTON-GALVANIZING WORKS
ACME STOCKTON GALVANIZING WORKS

By:

SHERIDAN RANDOLPH

Title:

Pres

Date:

12-26-90

DEPARTMENT OF HEALTH SERVICES

By:

[Signature]

Title:

Reg. Admin

Date:

1-3-91

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STATE OF CALIFORNIA

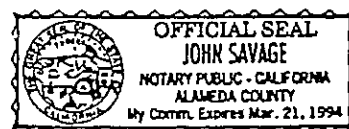
COUNTY OF

Alameda

On December 26,, 1990, before me, the undersigned, a Notary Public in and for said state, personally appeared Sheridan C. Randolph, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as President, of Acme Stockton Galvanizing Works, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the same pursuant to its bylaws or a resolution of its board of directors.

WITNESS my hand and official seal.

John Savage
Notary Public in and for said County and
State



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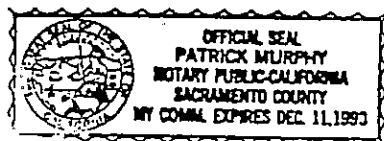
STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

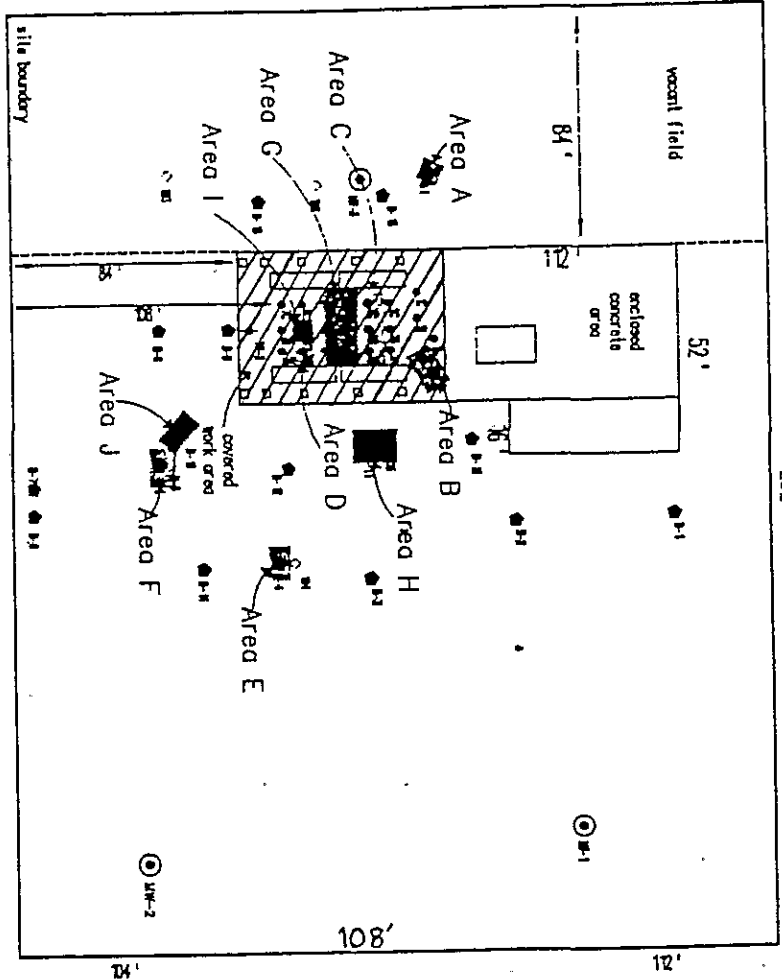
On JANUARY 4, 1991, before me, the undersigned, a Notary Public in and for said state, personally appeared VA F. S. ETAL, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as REGIONAL ADMINISTRATOR, of the Department of Health Services, the agency that executed the within instrument, and acknowledged to me that such agency executed the same.

WITNESS my hand and official seal.

[Signature]
Notary Public in and for said County and State



292'



LEGEND

- ⊕ sampling location by McKesson Environmental Services
- ⊕ location of boring by McKesson Environmental Services
- ◆ location of boring by Hydrotech Consultants, Inc.
- ⊕ location of monitoring well by Hydrotech Consultants, Inc.
- ◇ location of boring by Clayton Environmental Consultants
- ▨ lead and zinc contamination area
- low pH area
- clean soil and remediated soil area
- ▨ stabilized soil area

(not to scale)

Clayton ENVIRONMENTAL CONSULTANTS	Generalized Site Map Acme-Stockton Galvanizing Works 540 West Scotts Avenue Stockton, California Clayton Project No: 27485.00	Page 1
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ACME-STOCKTON GALVANIZING WORKS

EXHIBIT "A"

PROPERTY DESCRIPTION: LOTS 1, 2, 3, 4, 5, 6, 7, 8, 13, & 14, PLUS WESTERLY ONE-THIRD OF LOTS 15 & 16, ALL IN BLOCK 15 SOUTH OF MORNON CHANNEL, IN CITY OF STOCKTON ACCORDING TO THE OFFICIAL MAP THEREOF, TOGETHER WITH A STRIP OF LAND 80 FEET WIDE BY 300 FEET WEST OF THE ABOVE DESCRIBED PROPERTY

When embossed, and printed in purple ink, this is certified to be a true copy of the records of the San Joaquin County Records Office.

JAN 25 1991
 By *Margaret Thomas* YVONNE I. UDALL, Recorder Deputy